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HIGH COURT OF CHHATTISGARH AT BILASPUR
(Division Bench)

CORAM : Hon'ble Shri Vijay Kumar Shrivastava &
Hon'ble Shri Dhirendra Mishra, JJ.

Criminal Appeal No. 2719/1998

Appellant	:	Pilanthus Lakda, s/o. Kameel Fitku, aged about 26 years, Caste-Uraon, Occupation-Agriculture, r/o. Bodapehari, Chhirolpara, PS Bageecha, Dist. Jashpurnagar.

Versus

Respondents	:	State of M.P. through Police Station Bageecha, Dist. Jashpurnagar.

Present:

Mr. S.S. Rajput, learned counsel for the appellant.

Mr. M.P.S. Bhatia, learned Panel Lawyer for the State.

Criminal Appeal No. 1095/99

Appellant	:	Benjamin Lakda, S/o. Kameel Fitku, aged about 45 years, Caste-Uraon, Occupation-Agriculture, r/o. Bodapehari, Chhiropara PS, Bageecha, Dist. Jashpurnagar.

Versus

Respondent	:	State of M.P. through Police Station:Bageecha, Dist. Jashpurnagar.

Present:
Mr. R.K. Jain, learned counsel for the appellant.

Mr. M.P.S. Bhatia, learned Panel Lawyer for the State.

JUDGMENT

(Dated 24/03/2006)

Both these appeals are directed against the judgment of conviction and order of sentence dated 02/09/1998 passed by Additional Sessions Judge, Jashpurnagar, in S.T.No.114/98 whereby holding both the accused/appellants guilty for committing the offence of murder punishable under Section 302 read with Section 34 of the I.P.C, sentenced each of them to undergo R.I. for life and to pay a fine of Rs. 5,000/- and in default of payment of fine to undergo SI for five years.

2) Both the appellants, their parents and deceased John Bosco were living under a single roof in separate rooms. In the intervening night of 20/02/1998 and 21/02/1998 John Bosco was sleeping in his room. In the morning on 21/02/1998 John Bosco was found dead in his room. One of the brothers of the deceased gave intimation to Police who recorded merg intimation. The Police prepared inquest report and sent the body of deceased John Bosco for autopsy. Dr. Christ Dular Bkhla conducted the post mortem who in his report described the injuries found on the body of deceased and opined that the cause of death is asphyxia due to throttling. Police recorded the FIR and investigated the crime, on the memorandum of appellant Pilanthus, plastic rope and one wooden stick was recovered. The wooden stick was sent to the Medical Officer who in his report gave opinion that the injury found on the body of the deceased can be caused by the stick. Statements of the witnesses were recorded. Deceased John Bosco

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was mentally ill who in the fit of mental unsoundness was tyrannizing his family members. Although John Bosco was killed, but both the accused/appellants who were in the same house instead of unveiling the truth spread rumors that deceased died of natural death. After completion of investigation challan was led in the Court of Chief Judicial Magistrate, Jashpurnagar, who committed the case to the Court of Session for trial.

3) Charge under Section 302 read with Section 34 of the I.P.C., was framed against both the accused/appellants and was read over and explained to them who adjured their guilt and claimed to be tried. Their defence was that they are innocent and they have been falsely implicated in the case.

4) After appreciation of evidence, Additional Sessions Judge, Jashpurnagar held that the deceased was assaulted and killed and to show the crime to be of an accident, burn injuries in his body were caused. The appellants to suppress the crime, spread false rumour that the deceased died as a result of lunacy and illness, relying on these circumstances both the accused/appellants have been convicted and sentenced.

5) Learned counsel for both the accused/appellants did not dispute that the deceased John Bosco died as a result of throttling. Learned trial Court appreciating the medical evidence and autopsy report held that the death of John Bosco was homicidal in nature and to disagree with the said finding we do not find any material on record, set apart from the evidence of Dr.

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Christ Dular Bakhla (PW-8) and the post mortem report P/9, it has been established that deceased John Bosco died as a result of throttling which caused asphyxia and the death was homicidal.

6) The case completely rests on circumstantial evidence and the circumstance to hold both the accused/appellants guilty, relied on by the trial Court is that the appellants falsely spread over the rumour that deceased died as a result of unsoundness of mind and illness. The prosecution has in support of his case examined witnesses namely PW/1 Junus Lakda. PW/2 Iliyas Uraon, P.w.-3 Devilal Gabhel, P.W.-4 Parasnath Thakur, P.W.-5 Ujin Minj, P.w.-6 Jaikishore Vishwakarma, P.W.-7 Sahuram Ghritlahare and P.W.-8 Dr.Christ Dular Bakhla. We have meticulously gone through the statement of these witnesses but could not find any material to hold that both the accused/appellants spread over any false rumour relating to cause of death of their deceased brother John Bosco even if it may be true that they spread over false rumour that deceased John Bosco died natural death, that alone could not be sufficient nexus to connect the appellants with the crime i.e. murder of John Bosco.

7) When John Bosco who was sleeping in his room on the fateful night and was killed, evidence to establish that both the accused/appellants, their parents and other family members were also in that house in other rooms, is lacking, even otherwise assuming it to be true only on this score it cannot be held that all the family members who were living in the home were the authors of the said crime. In our considered opinion there is no evidence

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which may connect any of the accused/appellants with the crime i.e., murder of John Bosco

8) In the result both the appeals succeed. The impugned judgment of conviction and order of sentence passed by Additional Sessions Judge, Jashpurnagar in S.T. No. 114/98 dated 02.09.98 is set aside and both the accused/appellants Pilanthus Lakda and Benjamin Lakda are acquitted of the charges under Section 302 read with Section 34 of the IPC and are directed to be set at liberty forthwith if not required to be detained in any other case.

Sd/-
V.K.Shrivastava
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Suguna